

No. 13-20-00140-CV

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FILED IN  
13th COURT OF APPEALS  
CORPUS CHRISTI/EDINBURG, TEXAS  
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KATHY S. MILLS  
Clerk

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**RICARDO MALDONADO DAVILA**

**APPELLANT,**

**V.**

**M&M TOWING AND RECOVERY INC.**

**APPELLEE,**

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**On Appeal from the County Court at Law No. 4  
Hidalgo County, Texas, Trial Court Cause No. CL-19-5371-D**

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**APPELLANT'S FIRST AMENDED BRIEF ON THE MERITS**

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ATTORNEYS FOR APPELLANT**

**ORAL ARGUMENT IS REQUESTED**

## IDENTITY OF PARTIES AND COUNSEL

Pursuant to TEX. R. APP. P. 52.3(a), the following is a complete list of all parties and the names and address of all counsel:

### Appellant

#### **Ricardo Maldonado Davila**

Trial Counsel:

Raul A. Acevedo, Jr.  
Acevedo Law Firm, PLLC  
5717 N 10<sup>th</sup> St, Suite D  
McAllen, Texas 78504

Appellate Counsel:

Raul A. Acevedo, Jr  
Acevedo Law Firm, PLLC  
5717 N 10<sup>th</sup> St, Suite D  
McAllen, Texas 78504

### Appellee

#### **M&M TOWING AND RECOVERY INC.**

Trial Counsel:

Hon. John David Franz  
**Law Office of John David Franz**  
400 N. McColl, Suite B  
McAllen, Texas 78501

Appellate Counsel:

Hon. John David Franz  
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McAllen, Texas 78501

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## RECORD AND PARTY REFERENCES

The Clerk's Record will be cited by the abbreviation "CR" followed by page numbers<sup>1</sup> (*e.g.*, CR 12 – 19). No reporter's record was filed in this case. A page reference will not be preceded by "p." or "pp.", unless absolutely needed to avoid confusion. Commas will only be used to avoid confusion.

Appellee M&M Towing and Recovery Inc. will also be referred to as "appellee". Appellant Ricardo Manuel Davila will also be referred to as "appellant".

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<sup>1</sup> The Clerk's Record consists of only one Volume.

## INDEX OF AUTHORITIES

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## STATEMENT OF THE CASE

**Nature of the case:** After a January 29, 2020 bench trial on the merits, the trial court, the County Court at Law No. 4, entered a judgment on applications for tow hearings on Feb. 12, 2020 in favor of appellee (CR 280-285). The vehicles are as follows:

- a. 1969 Red Ford Mustang; License No. SSV47S; VIN NUMBER 9R02H102192
- b. 2016 Suzuki CLS Motorcycle; License No. 715 U3C, VIN NUMBER JS1VY53A0G21000043
- c. 1956 Chevrolet Bel Air; VIN# VC56J0036528; and
- d. 1970 Mustang with no identifying VIN NUMBER.

**Procedural Background:** Appellant's initial Application for Tow hearings were accepted on June 13, 2019 as PCT19-0186-J41, PCT19-0187-J41 (CR 78-79), PCT19-0188-J41 and PCT19-0189-J41 in the Hidalgo County Justice Court Precinct 4 Place 1 (CR 54-61) and later transferred (CR 76-77) to Hidalgo County Justice Court Precinct 2 Place 1 and were assigned cause numbers PCT19-0116-J21, PCT19-0117-J21, PCT19-0118-J21 and PCT19-0119-

J21. On or about September 27, 2019, the Justice of the Peace 2-1 rendered judgment in favor of Appellee (CR 35-37).

On October 4, 2019, appellant provided appellee Notice of Appeal on PCT19-0116-J21, PCT19-0117-J21, PCT19-0118-J21 and PCT19-0119-J21 (CR 10).

On October 9, 2019, appellant timely appealed PCT19-0116-J21, PCT19-0117-J21, PCT19-0118-J21 and PCT19-0119-J21. PCT19 -0117-J21 was assigned to the County Court at Law No. 4 in Hidalgo, Texas (CR 80) and provided Cause no. CL-19-5371-D. PCT 19-0116-J21 was assigned to the County Court at Law No. 2 in Hidalgo, Texas and provided cause no. CL-19-5373-B. PCT 19-0118-J21 was assigned to the County Court at Law No. 2 in Hidalgo, Texas and provided cause no. CL-19-5375-B. PCT 19-0119-J21 was assigned to the County Court at Law No. 5 in Hidalgo, Texas and provided cause no. CL-19-5374-E.

The parties filed an agreed motion of consolidation of CL-19-5375-B, CL-19-5374-E, CL-19-5373-B, and CL-19-5371-D in to cause No. CL-19-5371-

D (CR 190-191). On November 20, 2019 The County Court at Law No. 4 signed an agreed order consolidating actions. (CR 192)

After a January 29, 2020 bench trial on the merits, the trial court, the County Court at Law No. 4, entered a judgment on applications for tow hearings on Feb. 12, 2020 in favor of appellee (CR 280-285). On March 12, 2020, appellant filed a timely notice of appeal (CR 372-375).

## **ISSUES PRESENTED BY APPELLANT**

Issue No. 1: The Trial Court rendered an improper judgment under chapter 2308, subchapter J of the Texas Towing and Booting Act as the “tow(ing)” made the basis of this appeal are neither a consent tow nor a non-consent tow and are not subject to chapter 2308, subchapter J of the Texas Towing and Booting Act.

## STATEMENT OF FACTS

There is no factual dispute about the underlying removal of appellant's four vehicles from the residence located at 8820 E. Rogers Rd, Edinburg, Texas 78541. The parties agree that the property, located at 8820 E. Rogers Rd, Edinburg, Texas 78541, where the four vehicles were located on October 23, 2018, was once owned by Crisoforo Maldonado, Sr. and that Crisoforo Maldonado, Sr. died on June 17, 2018. (CR 288-294; CR 241-242; CR 244; CR 256-257). The parties agree that Crisoforo Maldonado, Jr., son of Crisoforo Maldonado, Sr., ordered the removal of the four vehicles from 8820 E. Rogers Rd, Edinburg, Texas 78541 on October 23, 2018. (CR 253; CR 258-259; CR 288-294; CR 245). The parties agree that Ricardo Manuel Davila<sup>2</sup>,

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<sup>2</sup> Mr. Ricardo Manuel Davila, appellant, is the grandson of Crisoforo Maldonado, Sr., deceased (CR 288-294). Crisoforo Maldonado, Jr. ordered the removal of his nephew's vehicles. There is an inconsistency in the trial Court's Judgment (280-285) and the Clerk's record (CR 286; CR 298-302) indicating that the P-39142, In the Estate of Crisoforo Maldonado, Sr, Probate Court of Hidalgo County, Texas, an application to determine heirship, was not accepted into evidence. Counsel for appellant, who was the counsel for appellant at trial, recalls that it was admitted into evidence. The Court in its Judgment cites the application in its Judgment by stating "The Court finds that Crisoforo Maldonado, Jr. is the son of Crisoforo Maldonado, Sr. and heir at law based on the filing in P-39142, *In Re Crisoforo Maldonado, Sr.*, which is an application to determine heirship in the Probate Court of Hidalgo County, Texas." (CR 282). Said application to determine heirship lists 8820 E Rodgers Rd, Edinburg, Texas 78541 as real property (CR 200). Finally, Crisoforo Maldonado's Texas DL, which was the first of appellee's exhibits

appellant, resided at 8820 E. Rodgers Rd, Edinburg, Texas 78541. (CR 288-294; CR 258; CR 242). Appellee, via its employee Valentin Cerda, removed the vehicles from 8820 E. Rodgers Rd, Edinburg, Texas 78541 on the instruction of Crisoforo Maldonado, Sr on October 23, 2018. (CR 258-260; CR 288-294; CR 245).

### **SUMMARY OF ARGUMENT**

The Trial Court rendered an improper judgment under chapter 2308, subchapter J of the Texas Towing and Booting Act as the “tow(ing)” made the basis of this appeal are neither a consent tow nor a non-consent tow and are not subject to chapter 2308, subchapter J of the Texas Towing and Booting Act<sup>3</sup>.

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admitted into evidence by the trial court, cites 8820 E Rodgers Rd, Edinburg, Texas 78541 as Crisoforo Maldonado, Jr.’s residence (CR-295). It is undisputed that 8820 E Rodgers Rd, Edinburg, Texas 78541 is a private residence.

<sup>3</sup> Appellant presented this argument to the County Court at Law No. 4, Hidalgo County, Texas (CR 243-246).

## ARGUMENT

### I. ISSUE NO. 1: THE TRIAL COURT RENDERED AN IMPROPER JUDGMENT UNDER CHAPTER 2308, SUBCHAPTER J OF THE TEXAS TOWING AND BOOTING ACT AS THE “TOW(ING)” MADE THE BASIS OF THIS APPEAL ARE NEITHER A CONSENT TOW NOR A NON-CONSENT TOW AND ARE NOT SUBJECT TO CHAPTER 2308, SUBCHAPTER J OF THE TEXAS TOWING AND BOOTING ACT.

Generally, the absence of a reporter's record precludes any relief on appeal. *Roy v. Hous. Police Dep't*, NUMBER 13-99-685-CV, 2002 Tex. App. LEXIS 4668, at \*3 (Tex. App.—Corpus Christi June 27, 2002) (citing *Christiansen v. Prezelski*, 782 S.W.2d 842, 843 (Tex. 1990)). The court of appeals, however, is required to address every issue raised and necessary to the final disposition of an appeal. *Id at 3-4* (citing TEX. R. APP. P. 47.1; *Office of Pub. Util. Counsel v. Pub. Util. Comm'n*, 878 S.W.2d 598, 599-600 (Tex. 1994)). Where an appeal involves no factual dispute, but strictly questions of law, no reporter's record is required. *Id at 4* (citing *Office of Pub. Util. Counsel v. Pub. Util. Comm'n*, 878 S.W.2d 598, 599-600 (Tex. 1994); *Segrest v. Segrest*, 649

S.W.2d 610, 611 (Tex. 1983); *Smith v. Grace*, 919 S.W.2d 673, 678-79 (Tex. App.-Dallas 1996, writ denied)).

There are two types of tows: Consent and Non-Consent. *Wehbe v. State*, No. 02-07-00407-CR, 2011 Tex. App. LEXIS 3419, at \*8 (Tex. App.—Fort Worth May 5, 2011) (citing Tex. Occ. Code. Ann. § 2308.002(3), (6) (defining consent and non-consent tows)).

### **Non-Consent Tows**

#### **(Incident Management Tow or Private Property Tows)**

A “non-consent tow” means any tow of a motor vehicle that is not a consent tow, including an incident management tow; and a private property tow. Tex. Occ. Code. Ann. § 2308.002. An Incident Management Tow is a tow of a vehicle from a public road due to an accident or incident. Tex. Occ. Code. Ann. § 2308.002(5-a). This includes when a vehicle owner does not request the tow but towing adversely affects traffic on the public roadway. All Incident Management tows are considered non-consent tows and all fees must be directly related to towing and available on a non-consent tow fee schedule. A Private Property is a tow of a vehicle authorized by the owner of a parking facility (for example, an apartment building parking lot,

restaurant, paid parking lot) without the consent of the owner or operator of the vehicle. Tex.\_Occ. Code. Ann. § 2308.002(8-b).

### **Consent Tow**

A Consent Tow is a tow of a motor vehicle in which the tow truck is summoned by the owner or operator of the vehicle, or by a person who has possession, custody, or control of the vehicle. Tex.\_Occ. Code. Ann. § 2308.002(3).

### **A. M & M TOWING, INC'S "TOWING" OF MR. DAVILA'S VEHICLES ARE NOT A NON-CONSENT TOW NOR A CONSENT TOW.**

#### **1. Not a Non-Consent Tow**

##### **a. Not a Private Property Tow**

The parties agree that the property, located at 8820 E. Rogers Rd, Edinburg, Texas 78541, where the four vehicles were located on October 23, 2018, was once owned by Crisoforo Maldonado, Sr. and that Crisoforo Maldonado, Sr. died on June 17, 2018. (CR 288-294; CR 241-242; CR 244; CR 256-257). The parties agree that Crisoforo Maldonado, Jr., son of Crisoforo Maldonado, Sr., ordered the removal of the four vehicles from 8820 E. Rogers

Rd, Edinburg, Texas 78541 on October 23, 2018. (CR 253; CR 258-259; CR 288-294; CR 245). The parties agree that Ricardo Manuel Davila, appellant, resided at 8820 E. Rodgers Rd, Edinburg, Texas 78541. (CR 288-294; CR 258; CR 242). Appellee, via its employee Valentin Cerda, removed the vehicles from 8820 E. Rodgers Rd, Edinburg, Texas 78541 on the instruction of Crisoforo Maldonado, Sr on October 23, 2018. (CR 258-260; CR 288-294; CR 245). A Private Property is a tow of a vehicle authorized by the owner of a parking facility (for example, an apartment building parking lot, restaurant, paid parking lot) without the consent of the owner or operator of the vehicle. Tex. Occ. Code. Ann. § 2308.002(8-b). As such, the tow(s) made the basis of this appeal are not a ‘private property tow’ as defined by statute as the vehicles were taken from a private residence.

#### **b. Not an Incident Management Tow**

An Incident Management Tow is a tow of a vehicle from a public road due to an accident or incident. Tex. Occ. Code. Ann. § 2308.002(5-a). The parties agree that the property, located at 8820 E. Rogers Rd, Edinburg, Texas 78541, where the four vehicles were located on October 23, 2018, was

once owned by Crisoforo Maldonado, Sr. and that Crisoforo Maldonado, Sr. died on June 17, 2018. (CR 288-294; CR 241-242; CR 244; CR 256-257). The parties agree that Crisoforo Maldonado, Jr., son of Crisoforo Maldonado, Sr., ordered the removal of the four vehicles from 8820 E. Rogers Rd, Edinburg, Texas 78541 on October 23, 2018. (CR 253; CR 258-259; CR 288-294; CR 245). The parties agree that Ricardo Manuel Davila, appellant, resided at 8820 E. Rodgers Rd, Edinburg, Texas 78541. (CR 288-294; CR 258; CR 242). Appellee, via its employee Valentin Cerda, removed the vehicles from 8820 E. Rodgers Rd, Edinburg, Texas 78541 on the instruction of Crisoforo Maldonado, Sr on October 23, 2018. (CR 258-260; CR 288-294; CR 245). Here, the vehicles were taken from a private residence. As such, the tow(ing) made the basis of this appeal is not an Incident Management Tow as said tow(ing) was not from a public road due to an accident or incident.

Consequently, since the tow(ing) made the basis of this appeal is not a private property tow nor an Incident Management Tow, the tow(ing) made the basis of this appeal is not a private property tow.

## **2. Not a Consent Tow**

A Consent Tow is a tow of a motor vehicle in which the tow truck is summoned by the owner or operator of the vehicle, or by a person who has possession, custody, or control of the vehicle. Tex. Occ. Code. Ann. § 2308.002(3). The parties agree that the property, located at 8820 E. Rogers Rd, Edinburg, Texas 78541, where the four vehicles were located on October 23, 2018, was once owned by Crisoforo Maldonado, Sr. and that Crisoforo Maldonado, Sr. died on June 17, 2018. (CR 288-294; CR 241-242; CR 244; CR 256-257). The parties agree that Crisoforo Maldonado, Jr., son of Crisoforo Maldonado, Sr., ordered the removal of the four vehicles from 8820 E. Rogers Rd, Edinburg, Texas 78541 on October 23, 2018. (CR 253; CR 258-259; CR 288-294; CR 245). The parties agree that Ricardo Manuel Davila, appellant, resided at 8820 E. Rodgers Rd, Edinburg, Texas 78541. (CR 288-294; CR 258; CR 242). Appellee, via its employee Valentin Cerda, removed the vehicles from 8820 E. Rodgers Rd, Edinburg, Texas 78541 on the instruction of Crisoforo Maldonado, Sr on October 23, 2018. (CR 258-260; CR 288-294; CR

245). As Mr. Crisoforo Maldonado, Jr<sup>4</sup>. did not have possession, custody or control over the vehicles made the basis of this appeal and since Mr. Davila did not authorize the removal of said vehicles, the tow(ing) made the basis of this appeal it not a consent tow.

**3. M & M Towing, Inc., as far as one can aver, has erroneously claimed that the tow(ing) made the basis of this appeal is a private property tow.**

M & M Towing, Inc. once claimed the following: “The towing company, vehicle storage facility, or parking facility owner that “authorized” the removal shall pay the costs of the removal and storage. (CR 211). As far as one can aver, Appellee has erroneously claimed that the tow(ing) made the basis of this appeal is private property tow. But as demonstrated above, this not a private property tow involving a parking facility owner.

**4. Since the “tow(ing)” made the basis of this appeal are neither a consent tow nor a non-consent tow, as shown above, the tow(ing) is NOT subject to chapter 2308, subchapter J of the Texas Towing and Booting Act and the judgment, as a matter of law, should be vacated.**

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<sup>4</sup> A proper way to expel someone from a property is through filing of an eviction proceeding.

As there is no factual dispute, and since the “tow(ing)” made the basis are neither a consent tow nor a non-consent tow, as shown above, the tow(ing) is not subject to chapter 2308, subchapter J of the Texas Towing and Booting Act and the judgment, as a matter of law, should be vacated.

### **CONCLUSION AND PRAYER**

A review of the clerk’s record clearly demonstrates that the trial court’s judgment was improper. The trial court rendered an improper judgment under chapter 2308, subchapter J of the Texas Towing and Booting Act as the “tow(ing)” made the basis of this appeal are neither a consent tow nor a non-consent tow, as shown above, and are not subject to chapter 2308, subchapter J of the Texas Towing and Booting Act. Mr. Ricardo Manuel Davila prays that this Court vacate the trial court’s judgment. Mr. Ricardo Manuel Davila prays that this Court grant him all other relief in law or in equity to which he is justly entitled.

Respectfully submitted,

/s/ Raul A. Acevedo, Jr.

RAUL A. ACEVEDO, JR.

Texas State Bar No. 24088855

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5717 N 10<sup>th</sup> St, Suite D

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Facsimile: (866) 427-1643

*ATTORNEY FOR RICARDO MANUEL DAVILA*

## CERTIFICATE OF COMPLIANCE

This brief was prepared using Microsoft Word for Mac, Version 16.40, in Palatino Linotype font. The font size in the text is 14-point. The font size in the footnotes is 12-point. This brief contains 1,986 words, not counting the sections excluded by TEX. R. APP. P. 9.4(i)(1).

/s/ Raul A. Acevedo, Jr.  
RAUL A. ACEVEDO, JR.

## CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Brief of Appellant was served in accordance with TEX. R. APP. P. 9.5 upon the following counsel of record on this 23<sup>rd</sup> day of September 2020:

Via Electronic Service

Hon. John David Franz

**Law Office of John David Franz**

400 N. McColl, Suite B

McAllen, Texas 78501

/s/ Raul A. Acevedo, Jr.

RAUL A. ACEVEDO, JR.

## **APPENDIX**

CL-19-5371-D

RICARDO MALDONADO DAVILA	§	IN THE COUNTY COURT
	§	
	§	
VS.	§	AT LAW NO. 4
	§	
M & M TOWING AND RECOVERY, INC.	§	HIDALGO COUNTY, TEXAS

**JUDGMENT ON APPLICATIONS FOR TOW HEARING**

On the 29<sup>th</sup> day of January, 2020, came for hearing the Four (4) Applications for Tow Hearings filed on June 13, 2019 by Ricardo Maldonado Davila ("Davila") in a Hidalgo County Justice of the Peace Court. The Court considered the appeals of four judgments from a Justice of the Peace Court where the Justice Court ruled that owners or operators of the four vehicles had waived their rights to the four tow hearings by failing to comply with V.T.C.A., Occupations Code §2308.456 (a) and (d) on the following described vehicles:

1. 1956 Chevrolet Bel Air; VIN# VC56J0036528;
2. 1969 Red Ford Mustang; License No. SSV47S; VIN# 9R02H102192;
3. 2016 Suzuki CLS Motorcycle; License No. 715U3C, VIN # JS1VY53A0G2100043;
4. 1970 Yellow Ford Mustang, Mach 1 with no identifying VIN#.

The Court considered the Applications for Tow Hearings in each of the four cases, *de novo*.

Prior to the commencement of the final hearing, the Court designated Crisoforo Maldonado, Jr. as a responsible third party pursuant to Section 33.004 of the Texas Civil Practices and Remedies Code at the request of Defendant M & M Towing. Plaintiff Ricardo



Date: 9/25/20  
I, Arturo Guajardo, Jr. County Clerk do  
hereby certify that this is a true and  
correct copy of the original document  
filed in my office.  
By: [Signature]  
Deputy Clerk

Davila appeared by and through his counsel, Raul Acevedo. Defendant M & M Towing and Recovery, Inc. ("M & M Towing") appeared by and through its counsel, John David Franz. A final hearing ensued and all matters were presented to the Court for adjudication. After considering the pleadings on file, the evidence presented and admitted by the Court and the arguments of counsel, the Court finds for Defendant M & M Towing and against Plaintiff Davila. The Court makes the following findings:

### WAIVER

Owners or operators of the four vehicles described above waived their rights to Tow Hearings by not filing applications for tow hearings within 14 days of the removal of vehicles from 8820 E. Rogers Road, Edinburg, Texas (the "property") and waiting 233 days until June 13, 2019 to file applications for tow hearings on each of the four vehicles described above.

The purpose of V.T.C.A., Occupations Code §2308.456(a) is to require applicants to protest a towing within 14 days of a vehicle's removal so that the controversy can be adjudicated quickly and economically. A justice court is required to hold the hearing within 21 days of the hearing request. With regard to the four vehicles described herein, the owners and/or operators failed to file an application for hearing within 14 days of October 23, 2018, the date M & M Towing removed the four vehicles from the property. Plaintiff Davila was aware on October 23, 2018 that the four vehicles had been removed by M & M Towing from the property and were in the possession of M & M Towing at the M & M Towing and Recovery lot located at 1406 S. McColl, Edinburg, Texas. Davila admitted he was aware the four vehicles were at M & M Towing as of October 23, 2018. The Court is of the opinion that it has jurisdiction to consider the appeals of Davila even though the applications were not timely filed; however, the Court does find that Davila and the owners or operators of the four vehicles waived their right to tow



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Deputy Clerk

hearings for each of the vehicles described herein by delaying more than seven months from the time the vehicles were removed before filing the request for the tow hearings. Prompt adjudication of a tow hearing as required by statute avoids excessive charges from accumulating in connection with a tow.

### PROBABLE CAUSE FOR REMOVAL OF VEHICLES

The Court further considered the evidence presented at the hearing and finds that Crisofo Maldonado, Jr., as a responsible third party, was authorized, with probable cause, to order the removal of the four (4) vehicles described as:

1. 1956 Chevrolet Bel Air; VIN# VC56J0036528;
2. 1969 Red Ford Mustang; License No. SSV47S; VIN# 9R02H102192;
3. 2016 Suzuki CLS Motorcycle; License No. 715U3C, VIN # JS1VY53A0G2100043;
4. 1970 Yellow Ford Mustang, Mach 1 with no identifying VIN#.

The Court finds that Crisofo Maldonado, Jr. possessed an ownership interest in the property described as 8820 E. Rogers Road, Edinburg, Texas, where the vehicles were located on October 23, 2018. Crisofo Maldonado, Sr. died on June 17, 2018. The Court finds that Crisofo Maldonado, Jr. is the son of Crisofo Maldonado, Sr. and an heir at law based on a filing in P-39142, *In Re Crisofo Maldonado, Sr.*, which is an application to determine heirship in the Probate Court of Hidalgo County, Texas. The Court finds that Crisofo Maldonado, Sr. died intestate. The Court further finds that pursuant to Estates Code Section 101.001(b), the estate of a person who dies intestate vests immediately in the person's heirs at law. Crisofo Maldonado, Jr. became an heir at law upon the death of his father on June 17, 2018 and became vested as an owner of the property described as 8820 E. Rogers Road, Edinburg, Texas. Thereafter, on October 23, 2018, Crisofo Maldonado, Jr., with probable cause and as an owner,



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Deputy Clerk

authorized the removal of the vehicles described above from the property. M & M Towing acted in response to a request by Crisoforo Maldonado, Jr. and this action to remove the four vehicles on October 23, 2018 was reasonable and based on probable cause due to the presentation of Crisoforo Maldonado, Jr. of a valid Texas Driver's license showing his residence to be 8820 E. Rogers Road, Edinburg, Texas 78541, signage at the entrance to the property indicating the private entrance was owned or controlled by "Maldonado" and a street sign at the entrance to the property designating the private drive as "C. Maldonado Drive". M & M Towing was presented with facts or circumstances which would indicate to a person of ordinary prudence that Crisoforo Maldonado, Jr. had authority to order the removal of the four vehicles from the property at 8820 E. Rogers Road, Edinburg, Texas 78541.

The Court further finds that on October 23, 2018, Davila did not possess an ownership interest in the property where the vehicles were located.

M & M Towing is a properly licensed towing and vehicle storage facility under license TDLR 0648655VSF in the State of Texas and M & M Towing responded to the request of Crisoforo Maldonado, Jr. when it towed the four vehicles described above to its vehicle storage facility in Edinburg, Texas.

The Court further finds that M & M Towing did not authorize the removal of the four vehicles and M & M Towing cannot, as a matter of law, be liable for payment of the costs of removal and storage of the four vehicles.

The Court finds that towing and storage fees charged by M & M Towing are authorized by law and finds that the following charges for towing and storage fees over the course of 464 days between October 23, 2018 and January 29, 2020, are reasonable, just and allowed by law:

1. 1956 Chevrolet Bel Air; VIN# VC56J0036528: **\$10,505.60;**



Date: 9/25/20  
I, Arturo Guajardo, Jr. County Clerk do  
hereby certify that this is a true and  
correct copy of the original document  
filed in my office.  
By: [Signature]  
Deputy Clerk

2. 1969 Red Ford Mustang; License No. SSV47S; VIN# 9R02H102192: **\$10,505.60;**
3. 2016 Suzuki CLS Motorcycle; License No. 715U3C, VIN # JS1VY53A0G2100043: **\$10,410.60;**
4. 1970 Yellow Ford Mustang, Mach 1 with no identifying VIN#: **\$10,405.60.**

The Court finds that M & M Towing possesses a valid vehicle storage facility lien on each of the four vehicles described herein and has the right to foreclose on its liens as permitted by law.

The Court finds that because M & M Towing and Recovery, Inc. did not authorize the removal of the four vehicles, and because Crisoforo Maldonado, Jr. as a Responsible Third Party authorized the removal of the four vehicles with probable cause, Davila, as the person who requested the hearing shall pay the costs of removal and storage as required by V.T.C.A. Section 2308.451(a). The Court further finds that pursuant to V.T.C.A. Section 2308.451(b), because M & M Towing did not authorize the removal of the four vehicles, M & M Towing is not liable for payment of costs of removal and storage. The Court finds that M & M Towing is a prevailing party and pursuant to V.T.C.A., Occupations Code Section 2308.458(e)(a), the Court finds that an award of attorney's fees and court costs is proper to compensate M & M Towing for legal services and costs associated in defending against the claims of Ricardo Davila.

Davila is liable to M & M Towing for all costs of court and for reasonable and necessary services of the attorney employed by M & M Towing and the Court adjudges Davila liable for the following:

- (a) For representation in the trial court.  
fg  
~~\$22,590.00~~ \$0
- (b) For representation through appeal to the court of appeals.



Date: 9/25/20  
I, Arturo Guajardo, Jr. County Clerk do  
hereby certify that this is a true and  
correct copy of the original document  
filed in my office.  
By: [Signature]  
Deputy Clerk

\$ 10,000.00

- (c) For representation at the petition for review stage in the Supreme Court of Texas.

\$ 7,500.00

- (d) For representation at the merits briefing stage in the Supreme Court of Texas and representation through oral argument and the completion of proceedings in the Supreme Court of Texas.

\$ 5,000.00

Court costs are assessed against Appellant Ricardo Davila.

All further relief not expressly granted is denied.

Entered this 12th day of <sup>February</sup>~~January~~, 2020.

  
Presiding Judge


Received from the Court  
2/12/2020 11:13 AM

On \_\_\_\_\_

SEF

Initials: \_\_\_\_\_



Date: 9-25-20  
I, Arturo Guajardo, Jr. County Clerk do  
hereby certify that this is a true and  
correct copy of the original document  
filed in my office.  
By:   
Deputy Clerk

## **Tex. Occ. Code § 2308.002**

This document is current through the most recent legislation which is the 2019 Regular Session, 86th Legislature, and the 2019 election results.

***Texas Statutes & Codes Annotated by LexisNexis® > Occupations Code > Title 14 Regulation of Motor Vehicles and Transportation (Subts. A — C) > Subtitle A Regulations Related to Motor Vehicles (Chs. 2301 — 2350) > Chapter 2308 Vehicle Towing and Booting (Subchs. A — K) > Subchapter A General Provisions (§§ 2308.001 — 2308.050)***

### **Sec. 2308.002. Definitions.**

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In this chapter:

- (1)**“Advisory board” means the Towing and Storage Advisory Board.
- (1-a)**“Boot” means a lockable road wheel clamp or similar vehicle immobilization device that is designed to immobilize a parked vehicle and prevent its movement until the device is unlocked or removed.
- (1-b)**“Booting company” means a person that controls, installs, or directs the installation and removal of one or more boots.
- (1-c)**“Boot operator” means an individual who installs or removes a boot on or from a vehicle.
- (2)**“Commission” means the Texas Commission of Licensing and Regulation.
- (3)**“Consent tow” means any tow of a motor vehicle in which the tow truck is summoned by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include an incident management tow or a private property tow.
- (4)**“Department” means the Texas Department of Licensing and Regulation.
- (5)**“Driver’s license” has the meaning assigned by [Section 521.001, Transportation Code](#).
- (5-a)**“Incident management tow” means any tow of a vehicle in which the tow truck is summoned to the scene of a traffic accident or to an incident, including the removal of a vehicle, commercial cargo, and commercial debris from an accident or incident scene.
- (5-b)**“Local authority” means a state or local governmental entity authorized to regulate traffic or parking and includes:
  - (A)**an institution of higher education; and
  - (B)**a political subdivision, including a county, municipality, special district, junior college district, housing authority, or other political subdivision of this state.
- (6)**“Nonconsent tow” means any tow of a motor vehicle that is not a consent tow, including:
  - (A)**an incident management tow; and
  - (B)**a private property tow.
- (7)**“Parking facility” means public or private property used, wholly or partly, for restricted or paid vehicle parking. The term includes:
  - (A)**a restricted space on a portion of an otherwise unrestricted parking facility; and
  - (B)**a commercial parking lot, a parking garage, and a parking area serving or adjacent to a business, church, school, home that charges a fee for parking, apartment complex, property

governed by a property owners' association, or government-owned property leased to a private person, including:

- (i) a portion of the right-of-way of a public roadway that is leased by a governmental entity to the parking facility owner; and
- (ii) the area between the facility's property line abutting a county or municipal public roadway and the center line of the roadway's drainage way or the curb of the roadway, whichever is farther from the facility's property line.

**(7-a)** "Parking facility authorized agent" means an employee or agent of a parking facility owner with the authority to:

- (A) authorize the removal of a vehicle from the parking facility on behalf of the parking facility owner; and
- (B) accept service on behalf of the parking facility owner of a notice of hearing requested under this chapter.

**(8)** "Parking facility owner" means:

- (A) an individual, corporation, partnership, limited partnership, limited liability company, association, trust, or other legal entity owning or operating a parking facility;
- (B) a property owners' association having control under a dedicatory instrument, as that term is defined in [Section 202.001, Property Code](#), over assigned or unassigned parking areas; or
- (C) a property owner having an exclusive right under a dedicatory instrument, as that term is defined in [Section 202.001, Property Code](#), to use a parking space.

**(8-a)** "Peace officer" means a person who is a peace officer under [Article 2.12, Code of Criminal Procedure](#).

**(8-b)** "Private property tow" means any tow of a vehicle authorized by a parking facility owner without the consent of the owner or operator of the vehicle.

**(9)** [Repealed.]

**(10)** "Public roadway" means a public street, alley, road, right-of-way, or other public way, including paved and unpaved portions of the right-of-way.

**(11)** "Tow truck" means a motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle. The term does not include:

- (A) a motor vehicle owned and operated by a governmental entity, including a public school district;
- (B) a motor vehicle towing:
  - (i) a race car;
  - (ii) a motor vehicle for exhibition; or
  - (iii) an antique motor vehicle;
- (C) a recreational vehicle towing another vehicle;
- (D) a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in the furtherance of a commercial enterprise;
- (E) a motor vehicle that is controlled or operated by a farmer or rancher and used for towing a farm vehicle;
- (F) a motor vehicle that:

(i) is owned or operated by an entity the primary business of which is the rental of motor vehicles; and

(ii) only tows vehicles rented by the entity;

(G) a truck-trailer combination that is owned or operated by a dealer licensed under Chapter 2301 and used to transport new vehicles during the normal course of a documented transaction in which the dealer is a party and ownership or the right of possession of the transported vehicle is conveyed or transferred; or

(H) a car hauler that is used solely to transport, other than in a consent or nonconsent tow, motor vehicles as cargo in the course of a prearranged shipping transaction or for use in mining, drilling, or construction operations.

(12) "Towing company" means an individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more tow trucks over a public roadway in this state but does not include a political subdivision of the state.

(13) "Unauthorized vehicle" means a vehicle parked, stored, or located on a parking facility without the consent of the parking facility owner.

(14) "Vehicle" means a device in, on, or by which a person or property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer but does not include a device moved by human power or used exclusively on a stationary rail or track.

(15) "Vehicle owner" means a person:

(A) named as the purchaser or transferee in the certificate of title issued for the vehicle under Chapter 501, Transportation Code;

(B) in whose name the vehicle is registered under Chapter 502, Transportation Code, or a member of the person's immediate family;

(C) who holds the vehicle through a lease agreement;

(D) who is an unrecorded lienholder entitled to possess the vehicle under the terms of a chattel mortgage; or

(E) who is a lienholder holding an affidavit of repossession and entitled to repossess the vehicle.

(16) "Vehicle storage facility" means a vehicle storage facility, as defined by Section 2303.002, that is operated by a person who holds a license issued under Chapter 2303 to operate the facility.

## History

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Enacted by Acts 2007, 80th Leg., ch. 1046 (H.B. 2094), § [1.12](#), effective September 1, 2007; am. Acts 2009, 81st Leg., ch. 757 (S.B. 702), § [3](#), effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 845 (S.B. 2153), § [3](#), effective September 1, 2009; am. Acts 2009, 81st Leg., ch. 1310 (H.B. 2571), § [1](#), effective September 1, 2009; am. Acts 2011, 82nd Leg., ch. 353 (H.B. 3510), § [4](#), effective September 1, 2011; am. [Acts 2015, 84th Leg., ch. 127 \(S.B. 1820\), § 1](#), effective May 23, 2015; am. Acts 2017, 85th Leg., ch. 919 (S.B. 1501), §§ 6, 20(a)(2), effective June 15, 2017; am. [Acts 2017, 85th Leg., ch. 967 \(S.B. 2065\), §§ 14.002](#), 14.012(a)(1), effective June 15, 2017.

## Annotations

## LexisNexis® Notes

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### Notes

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#### STATUTORY NOTES

##### Editor's Notes.

Acts 2011, 82nd Leg., ch. 353 (H.B. 3510), § 20(c) provides: "The Texas Commission of Licensing and Regulation shall adopt rules to implement the changes in law made by this Act to Chapters 2303 and 2308, Occupations Code, not later than January 1, 2012."

##### Amendment Notes

**2009 amendment**, by ch. 757, added the second sentence in the introductory language of (11); and added (11)(A) through (11)(F).

**2009 amendment**, by ch. 845, added "and Booting" in (1); added (1-a), (1-b), and (1-c); and made related changes.

**2009 amendment**, by ch. 1310, in (3), substituted "in which the tow truck is summoned" for "initiated" in the first sentence and "an incident management tow or a private property tow" for "a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle" in the second sentence; added (5-a), (6)(A), (6)(B), (7-a), and (8-a); added "including" in the introductory language of (6); and rewrote (8)(A), which read: "an owner or operator of a parking facility, including a lessee, employee, or agent of an owner or operator."

**2011 amendment**, in (5-a), substituted "to the scene" for "because" and added "including the removal of a vehicle, commercial cargo, and commercial debris from an accident or incident scene"; added "that charges a fee for parking" in the introductory language of (7)(B).

**2015 amendment**, added (11)(G) and (11)(H); and made related changes.

### Case Notes

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**Civil Procedure: Appeals: Appellate Jurisdiction: State Court Review**

**Criminal Law & Procedure: Criminal Offenses: Property Crimes: Larceny & Theft: Elements**

**Governments: Local Governments: Duties & Powers**

**Transportation Law: Private Vehicles: Towing**

**Civil Procedure: Appeals: Appellate Jurisdiction: State Court Review**

County civil court at law erred in dismissing the owner's appeal for want of jurisdiction because the owner was entitled to a tow hearing, he was also entitled to a de novo appeal of that hearing in the county civil court at law, and

nothing suggested that he was required to establish that his car was an “unauthorized vehicle” in order to be entitled to a tow hearing. [\*Badaiki v. Miller\*, No. 14-17-00450-CV, 2019 Tex. App. LEXIS 1384 \(Tex. App. Houston 14th Dist. Feb. 26, 2019\)](#).

### **Criminal Law & Procedure: Criminal Offenses: Property Crimes: Larceny & Theft: Elements**

Mere violation of Tex. Occ. Code Ann. § [2308.002\(6\)](#) is not necessarily a theft under Tex. Penal Code Ann. § [31.03\(b\)\(2\)](#); therefore, the state did not have unfettered discretion to prosecute as theft a towing violation by an employee of a towing company. The evidence was nevertheless sufficient to support a theft conviction. [\*Wehbe v. State\*, No. 02-07-00407-CR, 2011 Tex. App. LEXIS 3419 \(Tex. App. Fort Worth May 5, 2011\)](#), pet. ref'd [No. PD-0832-11, 2012 Tex. Crim. App. LEXIS 389 \(Tex. Crim. App. Mar. 7, 2012\)](#).

### **Governments: Local Governments: Duties & Powers**

County's decision to award a two-year contract to one particular towing company to perform the county's incident management tows was proper because a county's proprietary interest in creating efficiencies and its duty to control the county roads allows it to make such a contract. By contracting with one provider, the county avoided having to make several calls to locate a ready tow truck, and that efficiency meant that disabled vehicles could be removed quickly when the county requested a tow truck. .

### **Transportation Law: Private Vehicles: Towing**

County's decision to award a two-year contract to one particular towing company to perform the county's incident management tows was proper because a county's proprietary interest in creating efficiencies and its duty to control the county roads allows it to make such a contract. By contracting with one provider, the county avoided having to make several calls to locate a ready tow truck, and that efficiency meant that disabled vehicles could be removed quickly when the county requested a tow truck. .

### **Automated Certificate of eService**

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Bar No. 24088855  
racevedo@acevedo-law.com  
Envelope ID: 46595518  
Status as of 9/28/2020 8:13 AM CST

Associated Case Party: Ricardo Maldonado Davila

<b>Name</b>	<b>BarNumber</b>	<b>Email</b>	<b>TimestampSubmitted</b>	<b>Status</b>
Raul ArtemioAcevedo, Jr.		racevedo@acevedo-law.com	9/25/2020 5:01:46 PM	SENT

Associated Case Party: M&M Towing & Recovery, Inc.

<b>Name</b>	<b>BarNumber</b>	<b>Email</b>	<b>TimestampSubmitted</b>	<b>Status</b>
John David Franz	7389200	jdf@johndavidfranz.com	9/25/2020 5:01:46 PM	SENT